THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 27.07.2015

+ W.P.(C) 3455/2012 & CM Nos.7287/2012, 9218/2012, 19625/2012 & 6301/2014

SMT. SHANTI DEVI ..... Petitioner

versus

GOVT. OF NCT OF DELHI AND ORS. ..... Respondents

+ W.P.(C) 3486/2012 & CM Nos. 7348/2012, 7678/2012, 9626/2012, 19624/2012 & 6305/2014

SURENDER MOHAN CHOPRA ..... Petitioner

versus

GOVT. OF NCT OF DELHI AND ORS. ..... Respondents

+ **W.P.(C) 3485/2012 CM Nos. 7346/2012, 19626/2012 & 6306/2014**

SH. JATINDER GULATI ..... Petitioner

versus

GOVT. OF NCT OF DELHI AND ORS. ..... Respondents

+ **CM Nos. 6307/2014, 9537/2012 & 19931/2012 in W.P.(C) 3631/ 2012**

PRITHI PAL SINGH ARORA ..... Petitioner

versus

SOUTH DELHI MUNICIPAL CORPORATION AND ORS. ..... Respondents

+ **W.P.(C) 3739/2012 & CM Nos. 7846/2012, 7920/2012, 8208-8209/ 2012, 19621/2012 & 6308/2014**

RAJESH CHAWLA ..... Petitioner

versus

GOVERNMENT OF NCT OF DELHI & ORS. ..... Respondents

+ **W.P.(C) 3750/2012 & CM Nos. 7865/2012, 7918-7919/2012, 8212/2012,19623/2012 & 6309/2014**

RAVINDER SINGH ..... Petitioner

versusz

GOVERNMENT OF NCT OF DELHI & ORS. ..... Respondents

+ **W.P.(C) 3749/2012 & CM Nos. 7863/2012 & 9534/2012**

RAJIV NARULA ..... Petitioner

versus

GOVERNMENT OF NCT OF DELHI & ORS. ..... Respondents

+ **W.P.(C) 3744/2012 & CM Nos. 7853/2012, 7922/2012, 8210-8211/2012, 19618/2012 & 6310/2014**

KULWANT RAI COAL DEPOT ..... Petitioner

versus

GOVERNMENT OF NCT OF DELHI & ORS. ..... Respondents

+ **W.P.(C) 3741/2012 & CM Nos. 7849/2012, 9552/2012 & 2984/2014**

JAGDISH KUMAR LAL ..... Petitioner

versus

GOVERNMENT OF NCT OF DELHI & ORS. ..... Respondents

\+ **W.P.(C) 3747/2012 & CM Nos. 7859/2012 & 8206/2012**

MANINDER SAHNI ..... Petitioner

versus

GOVERNMENT OF NCT OF DELHI & ORS. ..... Respondents

\+ **W.P.(C) 6493/2012 & CM Nos. 17214/2012, 17280/2012, 19629/2012 & 6311/2014**

ANIL KUMAR ..... Petitioner

versus

GOVT. OF NCT OF DELHI AND ORS. ..... Respondents

\+ **W.P.(C) 2372/2013 & CM Nos. 4475-4476/2013**

RAMAN KOHLI ..... Petitioner

versus

GOVT. OF NCT OF DELHI AND ORS. ..... Respondents

\+ **W.P.(C) 6518/2013 & CM No. 14173/2013**

SADHNA GROVER ..... Petitioner

versus

NORTH MUNICIPAL CORPORATION OF DELHI

& ORS. ..... Respondents

Advocates who appeared in these cases:

For the Petitioner :Mr SuhailDutt, Sr. Advocate with Mr Hameed S. Shaikh &Ms Karishma Singhania.
Ms Chandrika Gupta.

For the Respondents :Mr H.S. Phoolka, Sr. Advocate with Ms Mini Pushkarna, Ms Shilpa Dewan, Ms Yoothica Pallavi & Ms Gulnoor Ghumany for MCD.
Mr Sanjeev Narula, CGSC and Mr Ajay Kalra, for UOI.
Ms Sangeeta Sondhi for GNCTD.
Mr Ajay Verma, Mr Rajiv Bansal, Mr Pawan Mathur, for DDA.
Mr Rajesh Gogna, CGSC, for R-3.
Mr H.S. Sachdeva and Mr N.A. Khan with Mr M.L. Sabharwal, Inspector (Food & Supply).

CORAM:-
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioners in these petitions are claiming rights to occupy premises which had been allotted as coal depots to their respective predecessors. Some of the petitioners are third parties who have allegedly acquired occupancy rights pertaining to the respective premises occupied by them, from the original allottees of those premises. Some of the petitioners are claiming to be the heirs of the original allottees. The petitioners are, essentially, challenging the policy of the Municipal Corporation dated 06.07.2011, framed by the then Municipal Corporation of Delhi, as being unconstitutional. The petitioners further challenge

resolutions of the Standing Committee being resolution No. 874 dated 16.03.2011 and resolution No. 10 dated 27.05.2011. In some cases, the respondent corporation also issued orders for cancellation of the Tehbazari licences and for retrieval of the sites allotted as coal depots and occupied by the petitioners. Since the aforesaid petitions raise common issues, the same have been taken up for hearing together and Writ Petition No. 3455/2012 is taken up as a lead matter.

2. In substance the petitioners are aggrieved by a policy which entails cancellation of licences issued in respect of coal depots. The petitioners allege that the policy dated 06.07.2011 (hereafter 'the impugned policy') is unconstitutional as it had been framed for a colorable purpose and solely for the reason that a wrong statement had been made before a Division Bench of the High Court in an appeal, being LPA No. 240/2006, preferred by the Corporation against an order passed in ***W.P.(C) 6827/1999*** captioned ***Sadhna Grover v. DDA and Ors.*** The petitioners further claim that the impugned policy as well as the consequent action of cancellation of the licences is illegal, as the sites in question do not belong to the respondent corporation but have been transferred to Delhi Development Authority (DDA). According to the petitioners, the action of the respondent corporation is wholly without jurisdiction.

3. In order to consider the aforesaid controversy, the relevant facts pertaining to the lead matter **- W.P. 3455/2012** captioned ***Shanti Devi v. Govt. of NCT of Delhi and Ors*** are briefly narrated as under:-

3.1. One Sh. Bodh Raj and his family migrated to India after the partition

in the year 1947. The government of East Punjab issued a "Certificate of Registration of Refugee Claim" on 24.04.1948 as Sh. Bodh Raj's claim was entered in the Register of Refugee Claims. It is stated that Sh Bodh Raj occupied the subject premises i.e. site measuring 200 sq. yards situated opposite S and T Block, West Patel Nagar, New Delhi-110008. It is stated that in the year 1955, Sh Bodh Raj started a bakery business and a dairy business which he continued for 2 to 3 years. Thereafter, the said business was closed down and Sh Bodh Raj started the business of dealing in coal. It is asserted that the Municipal Corporation of Delhi granted Tehbzari Rights to Sh Bodh Raj for carrying on the coal business in the year 1970 and Sh Bodh Raj had been regularly paying the requisite Tehbazari fee. Sh Bodh Raj expired on 04.08.1992 and was survived by his wife, son and two daughters as his legal heirs.

3.2. After the demise of Sh Bodh Raj, his wife Smt. Parbati Devi applied for transfer of Tehbazari rights in her name. Smt Parbati Devi also expired on 02.04.1994 and was survived by her son and two daughters. It is stated that after the demise of Smt. Parbati Devi, the petitioner - Shanti Devi, who is the wife of son of Bodh Raj and Parbati Devi, applied for transfer of Tehbazari rights in her favour with the consent of other legal heirs.

3.3. The distribution of coal was banned under the Public Distribution Scheme (PDS) in 1994.

3.4. The respondent corporation issued a show cause notice on 11.11.2011 in the name of Sh Bodh Raj, *inter alia*, stating that the Government of NCT had stopped running coal depots and banned coal

distribution under the PDS since 1994 and therefore the public purpose in respect of the Tehbazari stood abolished. The noticee was further called upon to attend the office of the concerned officer and produce the necessary documents for allotment of an alternate site in lieu of the existing Tehbazari site allotted to the noticee.

3.5. In response to the aforesaid show cause notice, the petitioner-Smt. Shanti Devi sent a letter pointing out that although certain commodities such as kerosene, sugar, cement and coal had been de-controlled, the sale of the said commodities had not been banned. It was further pointed out that the licence for storage and sale of coal had been renewed till 2009 and there was no policy to ban the distribution of coal. She further requested that the coal depot at the site be considered as legal.

3.6. After considering the said reply, the respondent corporation passed an order dated 18.11.2011. The respondent corporation held that prime land had been provided at cheap rates for supply of coal to public at large under the PDS Scheme and the same could not be used for catering to the demands of five star hotels without a licence or permission from the Delhi Government/Government Agency. The Tehbazari in respect of the site in question was cancelled and it was directed that the site be retrieved. The petitioner was, nonetheless, called upon to produce the relevant documents in order that an alternate Tehbazari site could be provided to them. The petitioner has impugned the aforesaid order in the present petition.

4. The learned counsel for the petitioners contended that the impugned policy is a colorable exercise of power and thus, was liable to be set aside.

He submitted that the impugned policy proceeded on the basis that directions had been issued by a Division Bench of this Court in ***LPA No. 240/2006*** captioned ***MCD v. Sadhna Grover & Anr.*** for framing of such policy. However, no such directions had been issued. He submitted that in the aforementioned proceedings before the Division Bench of this court, a statement was made that as per the policy decision of 1995, a decision had been taken by the Delhi Administration not to issue any fresh licences or to renew the existing licences for coal depots. He contended that the aforesaid stand was palpably false as there was no such policy as claimed by MCD before the Division Bench. He states that in order to justify the aforesaid stand, the counsel for MCD, subsequently, stated before the Division Bench that a policy decision had been had been taken in respect of the Coal depots and necessary action would be taken pursuant to the said policy. However, the policy was not placed on record. In order to make good the statement, which was made on 04.05.2009, the respondent corporation framed the impugned policy. The learned counsel relied upon the decision of the Supreme Court in ***NOIDA Entrepreneurs Association v. NOIDA and Others:*** **(2011) 6 SCC 508** in support of his contention that any policy which is not framed in good faith would stand vitiated as being unconstitutional.

5. The learned counsel for the petitioners further contended that the land in question had been transferred to DDA and therefore, any action in respect of the same, by the respondent corporation, would be wholly without jurisdiction. It was further contended that in certain cases DDA was considering regularization of the Tehbazari sites and thus, the petitioner

was also entitled to have their case for regularization considered by DDA. The learned counsel disputed the respondent corporation's contention that the title of the MCD could not be denied by virtue of Section 116 of the Evidence Act, 1872. He contended that Section 116 of the Evidence Act, 1872 only proscribed a tenant of an immovable property from denying the title of the landlord, at the beginning of the tenancy. However, in the event the property was transferred during the pendency of the tenancy, the tenant could always deny the title of the original landlord and this defence was not prohibited by Section 116 of the Evidence Act, 1872. It was contended that since the property in question had been transferred by MCD to DDA during the occupation by the petitioners, the petitioners could challenge the jurisdiction of the respondent corporation to cancel the licenses, as such decision could be taken only by the DDA. The learned counsel for the petitioners referred to the decision of the Supreme Court in ***S. Thangappan v. P. Padmavathy***: **(1999) 7 SCC 474** in support of his contention.

6. The learned counsel for the respondent corporation disputed the contentions canvassed by the petitioners. The learned counsel for the respondent corporation contended that the Division Bench had observed that a uniform action should be taken by the respondent corporation and therefore, the respondent corporation decided to renew its policy of granting Tehbazari licenses for running coal depots on relatively larger plots. According to the respondent corporation, Tehbazari licences were granted for carrying on business of coal on plots, which were larger in comparison to premises licenced for other businesses because at the material time coal was an important fuel required by the public and this

necessity of coal in the daily life of common man was recognized by the Government; accordingly, larger sized plots had been allotted for the said business as sufficient space was also required storage of coal. It was contended that at the material time, coal was controlled under the PDS but, subsequently, the said fuel lost its prominence on account of availability of other fuels such as electricity, CNG, LPG, etc. It is stated that in the aforesaid background, the respondent corporation had taken a decision to retrieve the larger plots from the Tehbazari licence holders and grant alternative sites measuring seven feet by five feet. The respondent corporation strongly disputed that the policy framed was a colorable exercise of power or lacked *bona fides*.

7. The learned counsel for the respondent corporation contended that the issue whether the property in question was with DDA or with MCD was a matter of controversy between DDA and respondent corporation and the petitioners could not take any advantage of the same. It was submitted that by virtue of Section 116 of the Indian Evidence Act, 1872, the petitioners were estopped from denying the title of the respondent corporation, as they/their predecessors had accepted the licence from the respondent corporation and also paid the requisite licence fee.

8. It was lastly submitted on behalf of the respondent corporation that the present petitions were liable to be dismissed as the petitioners had based their claims on forged documents. It was pointed out that the trade licence produced by the petitioner - Smt. Shanti Devi for carrying on the business of storage and sale of coal was a forged and fabricated document. It was

pointed out that the alleged licence produced by the petitioner was purportedly issued by the Health Department of MCD and this was obviously forged as the health department only issues health trade licences for sale of eatables or for recreational activities, under Section 417 of the Delhi Municipal Corporation Act, 1957. It was further asserted that no application for issuance of any trade licence for storage and sale of coal and wood was received by the Health Department, Karol Bagh Zone from the petitioner and thus the petitioner had forged the licence submitted by her.

9. I have heard the learned counsel for the parties.

10. Concededly, the health trade licence produced and relied upon by the petitioner is a forged and fabricated document. The respondent corporation had disputed the authenticity of the health trade licence and had filed an affidavit on 21.11.2012, pointing out that the health trade licence produced by the petitioner was forged and fabricated and no application for such licence had been received by the Health Department, Karol Bagh from the petitioner. The petitioner had contested the said affidavit by filing its short affidavit affirming that the petitioner had applied for a trade licence through online website and had obtained the trade licence by paying the appropriate licence fee. This was apparently incorrect and therefore, petitioner-Shanti Devi filed another application stating that she had been informed by one of the current coal dealers that he had obtained the trade licences from one Keshav Goel on payment of ₹6500/-. It was stated that thereafter, the petitioner (Smt. Shanti Devi) had also contacted Keshav Goel for obtaining the said licence and had paid him a sum of ₹6500/-. The trade licence

produced by the petitioner-Shanti Devi had been provided by the said Keshav Goel; Smt Shanti Devi now asserted that she was a victim of fraud by Keshav Goel. It was further stated that an FIR was also filed an FIR with the P.S. Karol Bagh pursuant to which Keshav Goel had been taken into custody. Smt Shanti Devi asserted that she had no intention of obtaining any favourable orders relying on forged documents and had filed the documents in good faith assuming the same to be authentic. Smt Shanti Devi also tendered an un-qualified apology for furnishing a forged document.

11. In addition to Smt Shanti Devi, petitioner in W.P. (C) 3455/2012, forged licences were also produced in other eight petitions. Initially, the said forged licences were asserted to be true, despite the respondent corporation contending the said documents to be forged. Subsequently, the petitioners in the said petitions have also conceded that the said trade licences produced by them were forged. Clearly, the said petitioners have admitted to obtaining the licences from a tout in order to indicate that they had been carrying on the business of coal legitimately under the licences issued by the respondent corporation. In my view, the petitioners cannot be absolved of their conduct by claiming that they are victims of a fraud. It is obvious that the petitioners could not obtain the licences from the respondent corporation and, therefore, had resorted to using the services of a tout to obtain such licences. In my view, such conduct would disentitle the petitioners from any equitable relief under Article 226 of the Constitution of India. However, since the question as to the validity of the policy has been raised, which would affect a large number of persons, I

consider it appropriate that the challenge raised by the petitioners to the impugned policy be considered on merits.

12. Essentially, the petitioners have challenged the impugned policy on the ground that the same is a colorable exercise of power and lacks *bona fides*. The petitioners have further contended that the respondent corporation would not have the jurisdiction to take any action against the petitioners since the land in question has been transferred to DDA.

13. Insofar as the first contention is concerned, i.e. that the impugned policy lacks *bona fide*, there is no material to substantiate this contention. The proceedings in this court referred to by the petitioners must be considered in proper perspective. One Ms. Sadhna Grover had filed a petition in this court being W.P.(C) 6827/1999. In the said writ petition, the petitioner therein (Sadhna Grover) claimed that in 1969 her father-in-law, Madan Lal Grover, was allotted a plot measuring 200 sq. yards on tehbazari at Rs.20 per month for use as a coal depot. She further asserted that her father-in-law expired on 19.07.1979 and, thereafter, DDA had demolished the structure built up on the said plot. Sadhna Grover prayed that DDA and MCD be restrained from dispossessing her from the said land in question. MCD contended that Sadhna Grover was at best a licencee and the licence in the name of her father-in-law had not been extended beyond 31.12.1989 and, thus, she had no right or interest in the plot in question. The MCD also disputed that it had ever issued a tehbazari licence in favour of the Sadhna Grover's deceased father-in-law for running a coal depot. MCD asserted that there was no policy to issue tehbazari sites for coal depots and only

tehbazari sites of an area measuring six feet by four feet had been granted. Subsequently, the MCD filed a counter affidavit which, *inter alia*, stated that the Sadhna Grover's father-in-law had been selling coal at the site near Shankar Road but there were no records available, which indicated that the site was allotted by MCD to Sh. Madal Lal Grover. A Coordinate Bench of this Court found that the stands taken by MCD were inconsistent. Further, DDA had taken a stand that the petitioner Sadhna Grover was not entitled for an alternate rehabilitation because of the stand taken by the MCD that it had not allotted any site to Madan Lal Grover.

14. In the circumstances, a co-ordinate bench of this the Court passed an order dated 22.11.2005 (in W.P.(C)6827/1999) directing the MCD to allot a site measuring 200 sq. yards to the Sadhna Grover for running a coal depot on licence basis. The application filed by the MCD for recall/modification of the said order was dismissed by the Court on 30.11.2005. The MCD appealed against this order before a Division Bench of this Court in LPA 240/2006. During the course of the appellate proceedings before the Division Bench of this Court, the Additional Deputy Commissioner (Land and State) of MCD appeared and stated that in 1995 a policy decision had been taken by Delhi Administration that no fresh licences would be issued for coal depots and the existing licences would also not be renewed. He also asserted that in view of the aforesaid decision, all tehbazari sites were required to be re-possessed. In this context, the Division Bench observed in its order dated 31.03.2009 that either the respondent (the writ petitioner) should be permitted to operate the coal depot or a uniform policy is adopted and implemented to close down coal depots and repossess the sites.

Pursuant to the aforesaid order, an affidavit dated 30.04.2009 was filed by the concerned officer of MCD, *inter alia*, affirming that a decision had been taken to re-possess the tehbazari sites of all coal depots which had been shut down. The Court was also informed that there was a proposal to allot tehbazari sites measuring six feet by four feet to the erstwhile tehbazari holders. DDA filed an affidavit dated 04.05.2009 affirming that it did not allot plot for tehbazari or for coal depots. On 08.05.2009, the learned counsel for the MCD stated before the Division Bench that a policy decision had been taken and the necessary action would be taken in pursuance thereof. Subsequently, on 07.08.2009, the learned counsel for the MCD sought further time and it was contended that the matter was pending consideration before the Standing Committee. The Division Bench observed that there was some change in the stand of MCD since earlier it had contended that a policy decision had been taken. The matter before the Division Bench was deferred at the instance of the MCD on several occasions thereafter, as it was contended that policy matter was pending. Thereafter, the impugned policy was placed before the Division Bench. The impugned policy incorrectly recorded that the Court had passed an order in LPA 240/2006 to frame a policy with regard to coal depots. The facts as narrated above, clearly indicate that no such order had been passed and the court (Division Bench) had only taken note of the submissions made on behalf of the MCD. It is in this context that the Division Bench by an order dated 04.05.2012 passed in LPA 240/2006 clarified that no such direction had been given and their observations were limited for a uniform implementation of any policy devised by the MCD. .

15. It is apparent from the above that the entire emphasis of the Division Bench, at the relevant time, was to ensure that a uniform policy is followed by the MCD and there is no pick and choose policy adopted by the concerned authorities.

16. In the aforesaid perspective, it cannot be disputed that it was necessary for the respondent corporation to frame a uniform policy with respect to the tehbazari licences for coal depots.

17. Clearly, the respondent corporation had considered the relevance of granting the tehbazari licences for running coal depots and taken a policy decision which is embodied in the impugned policy. It cannot be disputed that coal has lost its relevance as a fuel for common man. It is no longer a commodity which is distributed under the PDS. It is in the aforesaid perspective that the MCD adopted the impugned policy. The relevant extract of which is quoted below:-

> "1. Since the business of coal is no longer permissible and relevant. In the present context, the Tehbazari holders or their legal successors should be offered Tehbazari site measuring 7' x 5' preferably in areas near their existing coal depot sites failing which in the same zone or nearby zones.
>
> 2. The specific site allotment in each case would be made by the Zonal-Vending Committee/Authority after checking all documents establishing the identity and other credentials of the allottees.
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> 3. The MCD land where the coal depots were running, will be resumed and taken over by the Land & Estate Department Dy Commissioner of the Zone who will also initiate steps to protect/secure the land so that encroachments are prevented.

After checking the permitted land use and completing other formalities as per law/policy suitable projects, to benefit the public and community can be started on the said resumed land by the Remunerative Project Cell/other Departments of MCD.

4. Those persons who continue to do business of sale of coal with proper permission/licences as applicable will be permitted to continue the said business. However, these persons should not encroach/exceed beyond the permitted size of the site.

5. Further, those persons who are running coal depots till date and are in occupation of land more than allotted to them, the excess land shall be taken back immediately from them."

18. Undeniably, a comprehensive policy in respect of sites allotted for coal depots was warranted. The Division Bench had also emphasised that a policy be uniformly be implemented. Thus, in my view, the contention that the policy is a colourable exercise of power or lacks *bona fide* only because certain inaccurate statement had been made before the Division Bench in LPA 240/2006, is wholly unsustainable and without merit. It is relevant to note that on 30.01.2013, North Delhi Municipal Corporation has issued a corrigendum amending paragraph 1 of the impugned policy. The relevant extract of the said corrigendum is quoted below:-

"The matter has been examined and it is noticed that in the Resolution No.10 dated 27.05.2011 passed by the Corporation, there was no mention of the directions issued by the Hon'ble High Court for framing a policy, however, the orders of the Hon'ble High Court were reproduced as such along with the supporting material. While drafting the Circular dated 06.07.2011, due to an inadvertent mistake, the words "Hon'ble High Court of Delhi passed an order in LPA No. 240/2006 titled ***MCD Vs Sadhna Grover*** vide which MCD was directed to frame

a policy with regard to the Coal Depots. Pursuant to the above said orders of the Hon'ble High Court of Delhi" were mentioned in the circular.

3. With the approval of the Competent Authority, it has been decided to amend the Circular No. AO/CL&EC/2011/87 dated 06.07.2011 as under:-

The expression "Hon'ble High Court of Delhi passed an order in LPA No.240/2006 titled ***MCD Vs Sadhna Grover*** vide which MCD was directed to frame a policy with regard to the Coal Depots. Pursuant to the above said orders of the Hon'ble High Court of Delhi…" appearing in para-1 of the Circular No. AO/CL&EC/2011/87 dated 06.07.2011 may be deleted and in that place the following words may be substituted:-

"In continuation of this Office Circular No. AO/CL&EC/2011/87 dated 06.07.2011, the policy relating to sites allotted to Coal Depots by CL&EC department of MCD on Municipal Land on Tehbazari basis is again circulated with the request to initiate immediate action at zonal level."

4. All terms and conditions of the aforesaid Circular of the dated 06.07.2011 shall remain unchanged."

19. In view of the above, the contention that the impugned policy was framed only to sustain a statement made before a Division Bench of this court, cannot be accepted.

20. The second aspect to be considered is whether the respondent corporation would have the jurisdiction to take any action for retrieval of the sites in question. It is not disputed that the tehbazari licence for the said sites had been issued by the MCD and the necessary licence fee in respect

of the said sites was paid to MCD. It is well settled that a licencee is granted only a permissive user not conferred any right in respect of the said property. It is not disputed that the licences granted to the petitioners/their predecessors have expired; thus, indisputably, the petitioners have no right to continue to occupy the said premises. The DDA has also filed an affidavit, *inter alia*, stating as under:-

> "b) It is submitted that the Petitioner herein is only an encroacher over the government land and has no right, title and interest in the property in question. It is pertinent to note that neither DDA nor the Ministry of Rehabilitation have ever permitted the Petitioner to run Coal Depot and firewood works at the said property. Moreover, the coal and firewood work is restricted under the Trade Policy in Delhi. Thus the Petitioner is an encroacher and is liable to be evicted from the said Property."

21. It is clear from the aforesaid that even according to DDA, the petitioners have no right to continue on the respective sites occupied by them. In the case of ***MCD v. Sadhna Grover & Anr***: **LPA240/2006 decided on 18.03.2015**, a Division Bench of this Court had set aside the order passed by a Single Judge, as the Division Bench had concluded that a licencee is only a permissive user and acquires no right, title and interest in the land. The relevant extract of the said decision is quoted below:-

> "24. It cannot be lost sight of that the predecessor of the respondent No.1/writ petitioner was but a tehbazari holder. A tehbazari holder is merely a licensee, entitled only to use the for the purpose licensed and has no right, title or interest in the land. It cannot also be lost sight of that the said tehbazari was expressly for running a coal depot. It is not in dispute that the business of running of coal depot came to an end in the year 1995 and beyond which it was not permissible in law to run a

coal depot on the said land. In our opinion, the tehbazari of the respondent No.1/writ petitioner thus came to an end in 1995 itself and the respondent No.1/writ petitioner has not pleaded any right in law to continue in use of the said land for other purpose or to get any alternative land. The right of the respondent No.1/writ petitioner could at best be of rehabilitation in accordance with the policy, if any in this regard, as has rightly been observed in the orders aforesaid in this appeal."

22. It is also necessary to bear in mind that the petitioners are claiming their rights to occupy the said premises based on licences issued by the MCD. In the circumstances, it would not be open for the petitioners to resist eviction from the site, particularly, in view of the finding that they have no right, title or interest in the land in question. Further, even according to DDA, the petitioners are land encroachers. Since the predecessors of the petitioners were granted license for use of the property by MCD, its successor, North Delhi Municipal Corporation, would certainly have the power to retrieve the sites. It is well settled that the licencee only occupies the site pursuant to permissive use granted by the grantor. In the circumstances, it would not be open for a licencee to challenge the right of the grantor with whose permission the site is occupied. The decision in ***S. Thangappan*** *(supra)* would not be applicable in the facts of this case. In that case, the issue regarding applicability of Section 116 of the Evidence Act, 1882 was in the context of a relationship of landlord and tenant and not that of a licensor and a licencee. This is significant, because whilst a lessee acquires interest in property, a licensee does not. As indicated above, a licensee occupies premises only on the basis of permission grated by the grantor and acquires no right, title or interest in the property. Once the license is revoked, the licencee does not

have any right to continue in occupation of the premises and is liable to be evicted. *Stricto Senso*, section 116 of the Evidence Act, 1882 may not apply as it only postulates that a licencee is estopped from challenging the title to possession of the licensor at the beginning of the licencse. However, in this case, admittedly, the petitioners have no right to occupy the premises in question. In absence of any legal right, no relief under Article 226 of the Constitution of India can be granted to the petitioners. It is relevant to note that it is not the case of the petitioner that DDA has permitted them to continue to occupy the premises. On the contrary, DDA has also asserted that the petitioners are trespassers and are occupying the premises without any authority.

23. I am also inclined to accept the contention that any controversy with regard to the ownership of the land in question between DDA and MCD cannot be used by the petitioners to extend their occupation of the respective sites.

24. The petitions are, accordingly, dismissed. Pending applications stand disposed of. No order as to costs.

VIBHU BAKHRU, J

JULY 27, 2015
pkv/RK